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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ASEA, LLC, a Utah limited liability company, Plaintiff, v. JAMES G. PACK, an individual, Defendant.	**COMPLAINT** Case No. 2:17-CV-00079-PMW Magistrate Judge Paul M. Warner

Plaintiff ASEA, LLC ("ASEA") complains of Defendant James Pack and alleges as follows:

THE PARTIES

1. ASEA is a limited liability company doing business in Utah.

2. ASEA is the owner of U.S. Registered Trademark No. 3,691,808 (the "ASEA Mark"), registered October 6, 2009. The ASEA Mark is incontestable under 15 U.S.C. § 1065. A true and correct copy of the registration certificate is attached as Exhibit A.

3. James Pack is an individual, and, upon information and belief, resides in California.

JURISDICTION AND VENUE

4. This is a civil action arising under the Lanham Act, 15 U.S.C. § 1051 *et seq*.

5. This is a civil action arising under the Copyright Act, 17 USC § 106 *et seq*.

6. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 15 U.S.C. § 1125 (trademarks).

7. This Court has supplemental jurisdiction over ASEA's state law claim under 28 U.S.C. § 1367(a) because ASEA's state law claim arises from a common nucleus of operative facts alleged in ASEA's federal claim.

8. This Court has personal jurisdiction over Defendant because the actions giving rise to this lawsuit occurred in this district and because Defendant is likely to cause and has caused actual confusion among Utah consumers.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of Defendant's acts giving rise to ASEA's claims occurred in this District.

FACTUAL BACKGROUND

10. ASEA is a multi-level marketing company that distributes nutritional and dietary

supplements through distribution associates.

11. ASEA is the owner of incontestable U.S. Registered Trademark No. 3,691,808 (the "ASEA Mark"), registered October 6, 2009.

12. ASEA owns and continuously uses the ASEA Mark in commerce in connection with its multilevel marketing business services.

13. ASEA does not license the use of its ASEA Mark to any third party.

14. For nearly ten years, ASEA has spent millions of dollars promoting and developing its ASEA Mark or brand.

15. ASEA has active distributors in all fifty states and twenty-six countries throughout the world. As a result of ASEA's efforts in promoting and developing its ASEA Mark/brand, ASEA now generates over $75 million of revenue each year.

16. As a result of ASEA's sales and marketing, the ASEA Mark/brand is recognized in the nutritional supplement market as distinctive of services of ASEA.

17. Independent of Defendant James Pack, ASEA has through continued use of the ASEA Mark/brand in commerce established good will in the ASEA Mark/brand.

18. Defendant is a former ASEA executive and was an initial but now former founder.

19. In August 2013, Defendant was removed as a member of ASEA's Board of Managers severing all ties of Defendant to the operations of ASEA.

20. Defendant is not a distributor of ASEA.

21. Defendant has no license from ASEA to use the ASEA Mark/brand.

22. Defendant has no license from ASEA to use copyrighted works of ASEA.

23. As of January 29, 2017, Defendant had no permission or authority from ASEA to work with or otherwise attempt to assist ASEA distributors.

24. Nevertheless on January 29, 2017, without authorization from ASEA, Defendant commenced calling himself "ASEA," using the ASEA Mark/brand and is using ASEA's copyrighted works.

25. Since January 29, 2017, Defendant has commenced branding himself with the identical ASEA Mark for multilevel marketing services.

26. In a January 29, 2017 publication to ASEA distributors, Defendant declared: "I AM ASEA."

27. In his January 29, 2017 publication, Defendant has commenced falsely associating himself with ASEA's copyrighted works by displaying an image of himself holding ASEA's copyrighted product packaging and declaring "I AM ASEA."

28. In his January 29, 2017 publication, Defendant declares that Mr. Verdis and Mr. Tyler, executives of ASEA forced him out of ASEA.

29. Defendant's January 29, 2017 publication solicits the help of ASEA distributors to cause a movement within ASEA without the authorization of ASEA.

30. Defendant's January 29, 2017 publication expressly calls upon the distributors of ASEA to help him.

31. Defendant is using these false premises to cause an insurrection in and harm to the ASEA distribution network.

32. Defendant's January 29, 2017 publication is causing its intended effect.

33. Distributors are identifying the shaming, divisive harm, confusion and contentious

ranker caused by Defendant's January 29, 2017 publication.

34. Because of Defendant's January 29, 2017 publication, heretofore faithful distributors are newly questioning the good will, integrity and ethics upon which ASEA and its leaders established ASEA and its services and products.

35. Defendant's January 29, 2017 publication is causing ranker, division and discord among distributors of ASEA.

36. Defendant's January 29, 2017 publication is causing distributors within ASEA to be sidetracked by Mr. Pack's intrusion into ASEA's business operation and wasting time and effort that is normally spent on growing the profitable business operations of ASEA.

37. Defendant's January 29, 2017 publication is causing many down-line distributors to question the integrity and ethics of both ASEA's business operations and its leaders.

38. Defendant's January 29, 2017 publication is causing many down-line distributors to question the continued success of ASEA.

39. Defendant's January 29, 2017 publication is causing distribution leaders within ASEA to have to work with their down-line distributors to repair and/or reestablish the good will of ASEA and its leaders.

40. Defendant's January 29, 2017 publication is causing distributors and investors to question the value of the continued investment of time or money in ASEA.

41. Defendant's January 29, 2017 publication is causing distribution leaders within ASEA to have to work with their down-line distributors to reinstill in their down-line distributors an incentive to continue to grow the business which was inherent and self-starting with down-line distributors before Defendant's January 29, 2017 publication.

42. Defendant is defiant about continuing to unlawfully masquerade as ASEA and publicly stated, "I clearly see a path whereby I can help Associates build their teams, increase their incomes, and get ASEA to the words." "… I have the passion and desire to continue what I started. I want every Associate to know that I am committed, it is my life focus to see ASEA grow, and I could use your help." "But I love the company, I can help Associates and Distributors be successful, I have the energy, desire, passion, and capability to grow ASEA…The simple point is- ASEA has my heart and mind. That's what I want to do with my life. I will not quit, I can not [*sic*] quit." "There is not a person alive that can have such a positive influence on ASEA and building Associates teams that I can." "I am confident that ASEA [will] continue to grow. I will be part of it."

43. As a result of his conduct beginning January 29, 2017, Defendant has disparaged, damaged and harmed the business operations of ASEA.

44. As a result of his conduct beginning January 29, 2017, Defendant has disparaged, damaged and harmed and will continue to disparage, damage and harm the good will of ASEA and its business leaders.

45. As a result of his conduct beginning January 29, 2017, Defendant has interfered with ASEA's contract-bound distributors of ASEA's multi-level marketing commercial activities.

46. Defendant's January 29, 2017 publication is of a type which hinders the ability of distributors to recruit new distributors or retain existing distributors.

47. As a result of his conduct beginning January 29, 2017, Defendant is likely to cause and is causing actual confusion, harm and damage including irreparable harm in the

marketplace by masquerading as ASEA and causing new confusion, division, doubt and ranker among distributors of ASEA where there was previously none.

FIRST CLAIM FOR RELIEF
Violation of the Lanham Act, 15 U.S.C. § 1125(a)

48. ASEA incorporates all previous paragraphs as if set forth fully herein.

49. Defendant's conduct using ASEA's Mark, stating that "I AM ASEA" and stating that he is a current "ASEA Founder" in connection with providing multi-level marketing services and contacting ASEA's associates and distributors constitutes the improper use in commerce of words, terms, and names that are likely to cause confusion, mistake, or deception as to whether Defendant is affiliated, connected, or associated with ASEA.

50. Defendant's conduct in providing multi-level marketing services and promoting ASEA's products in connection with the ASEA name as well as representations that Defendant is a current ASEA representative, including Defendant's use of the ASEA Mark, is the improper use in commerce of words, terms, and names that are likely to create confusion as to whether ASEA originated, sponsored, or approved of Defendant's conduct, including Defendant's use of the ASEA Mark.

51. By so acting, Defendant has violated § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

52. ASEA has been and will continue to be damaged by such wrongful actions.

53. Because Defendant's actions were intentional, willful, and deliberate, ASEA is entitled to an award of Defendant's profits, any damages sustained by ASEA, and the costs of this action, including treble damages under § 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

54. ASEA is further entitled to injunctive relief and monetary damages against

Defendant.

SECOND CLAIM FOR RELIEF
Violation of the Lanham Act, 15 U.S.C. § 1114

55. ASEA incorporates all previous paragraphs as if set forth fully herein.

56. Defendant's use of the registered ASEA Mark without ASEA's consent is a use in commerce of a reproduction, counterfeit, copy, or colorable imitation of the registered ASEA Mark in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with such use which has caused and is likely to cause confusion, or to cause mistake, or to deceive.

57. Defendant's reproduction, counterfeiting, copying and colorable imitation of the registered ASEA Mark, applied to prints, and advertisements, including Defendant's promotion of his services on Facebook, has caused and is likely to cause confusion, or to cause mistake, or to deceive.

58. Defendant's acts were committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

59. By so acting, Defendant has violated 15 U.S.C. § 1114.

60. ASEA has been and will continue to be damaged by such wrongful actions.

61. Because Defendant's actions were intentional, willful, and deliberate, ASEA is entitled to an award of Defendant's profits, any damages sustained by ASEA, and the costs of this action, including treble damages under § 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

62. ASEA is further entitled to injunctive relief and monetary damages against Defendant.

THIRD CLAIM FOR RELIEF
Direct Copyright Infringement

63. ASEA incorporates all previous paragraphs as if set forth fully herein.

64. ASEA is the owner of copyright in its original expressions recorded in its product Label.

65. Defendant copied, published and displayed ASEA's Label without permission on his Facebook page.

66. The conduct by Defendant alleged herein infringed and violated ASEA's exclusive license to the Label, which is encompasses the full range of copyrights in the Label, in violation of the U.S. Copyright Act, 17 U.S.C. § 101, et seq.

67. Defendant's infringements were willful, knowing, and intentional.

68. By copying, distributing, displaying, publishing, and otherwise exploiting ASEA's copyrighted creative work, Defendant infringed ASEA's copyrights in the creative work identified herein and caused ASEA significant injuries, damages, and losses in amounts to be determined at trial.

69. ASEA seeks all damages recoverable under the Copyright Act, including actual damages, including Defendant's profit attributable to the infringements, and damages suffered as a result of the lack of compensation, credit, and attribution and from any diminution in the value of ASEA's copyrighted work.

THIRD CLAIM FOR RELIEF
Tortious Interference with Existing and Prospective Business Relations

70. ASEA incorporates all previous paragraphs as if fully set forth herein.

71. ASEA has valid and existing economic and/or contractual relationships with its

distributors. At all times relevant herein, Defendant had actual and constructive knowledge of the existence of those relationships.

72. ASEA's relationship with its distributors is one of ASEA's most valuable assets.

73. ASEA spends considerable time, effort, and expense maintaining its relationship with its associates and distributors.

74. ASEA spends considerable time, effort, and expense maintaining the quality of the services it provides in connection with the ASEA name.

75. ASEA also spends considerable time, effort, and expense in locating, soliciting, strengthening, and fostering its relationships with prospective distributors. At all times relevant herein, Defendant had actual and constructive knowledge of the existence of those prospective economic and/or contractual relationships.

76. ASEA's good will and reputation is essential to its success in marketing its products and services and in attracting and retaining distributors.

77. ASEA's success also depends in critical part on the relationships it establishes with its existing and prospective distributors.

78. Defendant intentionally interfered with ASEA's existing and potential economic relations for an improper purpose or by an improper means.

79. Indeed, Defendant's conduct in violation of 15 U.S.C. § 1125(a) constitutes an improper means of interfering with ASEA's economic relations and is an independently tortious act that violates recognized duties in tort under common law and by statute.

80. In addition, Defendant's conduct is intentionally designed by Defendant to harm ASEA's economic relations and has caused actual harm.

81. By posting divisive messages on Facebook, Defendant is causing confusion in the marketplace and intentionally interfering with ASEA's existing and potential economic relations with its distributors.

82. By posting divisive messages on Facebook, Defendant is damaging ASEA's relationships, including the trust and reputation ASEA has built with its distributors who rely on ASEA to ensure the quality of the services provided in connection with the ASEA Mark.

83. Defendant's interference with the foregoing relationships has caused and/or will cause injury to ASEA's business in the form of lost sales, a loss of current distributors, the potential loss of current and prospective distributors, the loss of the company's good will, and expenditures made to repair damaged relationships with distributors.

84. By reason of Defendant's improper interference with ASEA's existing and prospective economic relations with its existing and/or prospective customers, ASEA has suffered and will continue to suffer, actual and consequential damages in an amount to be proven at trial.

85. Because Defendant's conduct is intentional, willful, and malicious, and manifests a knowing and reckless indifference toward, and disregard of, the rights of ASEA, ASEA is entitled to recover exemplary damages against Defendant in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, ASEA prays for judgment against Defendant as follows:

A. That a preliminary and permanent injunction be issued enjoining Defendant and all other persons participating or acting in concert for him:

1. From using the ASEA Mark or the I AM ASEA mark in connection with

multi-level marketing services and goods and services related thereto;

2. From using the ASEA Mark or any similar marks that are likely to cause confusion or mistake as to whether Defendant is currently affiliated or connected with, sponsored or approved by, or associated with ASEA;

3. From falsely representing himself as being currently affiliated or connected with, sponsored or approved by, or associated with ASEA or an ASEA founder;

4. From further copying, publishing and displaying ASEA's Label in connection with any commercial activity;

5. From engaging in any act that is likely to falsely cause consumers to believe that Defendant is in any way currently associated with ASEA; and

6. From falsely representing to ASEA distributors that Defendant is authorized by ASEA to assist in ASEA-related activities; and

7. From making false statements regarding his relationship with ASEA to ASEA distributors.

B. That the Court issue an order that Defendant's infringement and interference is intentional and willful.

C. That Defendant be required to pay such actual damages as ASEA has sustained in consequence of the acts of Defendant complained of herein in an amount to be determined at trial, and that any such monetary award be enhanced up to three times pursuant to the provisions of 15 U.S.C. § 1117.

D. That Defendant be required to pay punitive damages in an amount to be determined at trial.

E. The Defendant be required to account to ASEA for all profits, if any, resulting from Defendant's conduct and that such award of profits to ASEA be increased by the Court as provided for under 15 U.S.C. § 1117.

F. That ASEA have recovery from Defendant from the costs of this action and ASEA's reasonable attorney's fees pursuant to 15 U.S.C. § 1117.

G. That ASEA be granted such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

ASEA hereby demands trial by jury as to all issues in this action triable by jury.

DATED this 1st day of February, 2017.

Respectfully Submitted,

KIRTON McCONKIE

By /s/ Dax D. Anderson
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Todd E. Zenger
Dax D. Anderson

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